

REMARKS

Claims 89 through 124, 127, and 128 are pending in this Application. Claims 125 and 126 have been canceled without prejudice or disclaimer. Claims 89, 98, 107 and 117 through 124 have been amended, and new claims 127 and 128 have been added. Care has been exercised to avoid the introduction of new matter. Adequate descriptive support for the present Amendment should be apparent throughout the originally filed disclosure as, for example, the Abstract, FIG. 2, ¶¶ [0023], [0025], [0030] through [0032], [0077] of the corresponding US Pub. No. 20070289023. Applicants submit that the present Amendment does not generate any new matter issue.

Telephonic Interview of September 1, 2010.

Applicants express appreciation for the Examiner's courtesy in granting and conducting a telephonic interview on September 1, 2010. During the interview, the Examiner indicated that the amended claims would appear to distinguish over the art of record, but that a further search would be required. It is with that understanding that the present Amendment is submitted.

Claims 117 through 126 were rejected under 35 U.S.C. §101 as being allegedly directed to non-statutory subject matter.

In stating the rejection, the Examiner asserted that claims 117 through 126 recite a computer-readable storage medium that can be interpreted as transitory signals, directed to non-statutory subject matter. This rejection is traversed.

Specifically, claims 117 through 126 been clarified by reciting "a non-transitory computer-readable storage medium", which constitute statutory subject matter under 35 U.S.C.

§101. Applicants therefore solicit withdrawal of the rejection of claims 117 through 126 under 35 U.S.C. §101.

(1) Claims 89 through 91, 94 through 96, 98 through 109, 112 through 119, and 122 through 126 were rejected under 35 U.S.C. §102(e) as being anticipated by *Cochran et al.* (US 20050154787, “Cochran”).

In stating the rejection, the Examiner asserted that *Cochran* discloses an apparatus identical to that claimed. Applicants respectfully traverse this rejection.

The factual determination of lack of novelty under 35 U.S.C. §102 requires the identical disclosure in a single reference of each element of a claimed invention, as those elements are set forth in the claims, such that the claimed invention is placed into the recognized possession of one having ordinary skill in the art. *Praxair, Inc. v. ATMI, Inc.*, 543 F.3d 1308, (Fed. Cir. 2008); *Dayco Prods., Inc. v. Total Containment, Inc.*, 329 F.3d 1358 (Fed. Cir. 2003); *Crown Operations International Ltd. v. Solutia Inc.*, 289 F.3d 1367 (Fed. Cir. 2002); *Candt Tech Ltd. v. Resco Metal & Plastics Corp.*, 264 F.3d 1344 (Fed. Cir. 2001). Moreover, when imposing a rejection under 35 U.S.C. §102(e) for lack of novelty, the Examiner is required to specifically identify where in the applied reference disclosed each and every feature of the claimed invention, particularly when such is not apparent as in the present case. *In re Rijckaert*, 9 F.3d 1531 (Fed. Cir. 1993); *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452 (Fed. Cir. 1984). Indeed, there are fundamental differences between the claimed method, apparatus, and computer readable storage medium and those disclosed by *Cochran* that scotch the factual determination that *Cochran* discloses, or even remotely suggests, a method, apparatus, and computer readable storage medium identically corresponding to that claimed.

In particular, independent claims 89, 107, and 117 recite, *inter alia*: “determining to establish a wireless communication connection between a mobile terminal and a server stored with a gaming application; determining to establish a data network connection between the mobile terminal and the server, **the data network connection being independent from the wireless communication connection**; and determining to download the gaming application from the server to the mobile terminal via the data network connection and the wireless communication connection.” The above features of the independent claims are neither disclosed nor suggested by *Cochran*. In particular, both of *Cochran*’s data communications network and wireless communications network connect a wireless device 102 to a **communication tower 106** (and then a server 116), such that they **overlap with** each other rather than being **independent from** each other.

Claim 90, the patentability of which is separately advocated, recites that the gaming application is downloaded **simultaneously** using the wireless communication connection **and** the data network connection (FIG. 2, “double data connections” [0023], [0025], “two-path connection” [0030], [0031], and [0077]). In contrast, *Cochran* downloads the gaming application using either a wireless communication connection **or** a data network connection ([0021]).

Claim 91, the patentability of which is also separately advocated, recites “authenticating the mobile terminal via the wireless communication connection **while** downloading the gaming application via the data network connection. By way of example, in one embodiment of the claimed invention, a key code is transferred via the PLMN (from the phone to the server or vice versa) **while** the bulk software is downloaded via the internet connection ([0030]). On the other

hand, *Cochran* authenticates the mobile terminal via the wireless communication connection “before” (rather than “while/during”) downloading the gaming application.

The above-argued fundamental and functionally significant differences between the claimed method, apparatus, and computer readable storage medium and that disclosed by *Cochran* undermine the factual determination that *Cochran* discloses a method, apparatus, and computer readable storage medium identically corresponding to those claimed, as required under 35 U.S.C. §102(e). *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc.*, 976 F.2d 1559 (Fed. Cir. 1992); *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565 (Fed. Cir. 1986). Applicants, therefore, submit that the imposed rejection of claims 89 through 91, 94 through 96, 98 through 109, 112 through 119, and 122 through 126 under 35 U.S.C. §102(e) for lack of novelty based on *Cochran* is not factually viable, and hence, solicit withdrawal thereof.

(2) Claims 92, 93, 110, 111, 120, and 121 were rejected as obvious under 35 U.S.C. §103(a) based on *Cochran* in view of *Skog et al.* (US 20040260816, “*Skog*”).

(3) Claim 97 was rejected as obvious under 35 U.S.C. §103(a) based on *Cochran* in view of *Thielke et al.* (US 6324564, “*Thielke*”).

Each of the above-referenced rejections (2) and (3) is respectfully traversed.

Claims 92, 93, and 97 depend from independent claim 89; claims 110 and 111 depend from independent claim 107; and claims 120 and 121 depend from independent claim 117. Applicants submit that claims 92, 93, 97, 110, 111, 120, and 121 are free of the applied prior art for reasons advocated *supra* with respect to independent claims 89, 107, and 117. The

additional references to *Skog* and *Thielke* do not cure the previously argued deficiencies in *Cochran*.

Accordingly, even if the applied references were combined as proposed by the Examiner, and Applicants do not agree that the requisite basis for the asserted motivation has been established, the claimed inventions would not result. *See Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044 (Fed. Cir.1988). Applicants therefore submit that the above-identified rejection encompassing claims 92, 93, 97, 110, 111, 120, and 121 under 35 U.S.C. 103(a) for obviousness based primarily on *Cochran* are not factually or legally viable and, hence, solicit withdrawal thereof.

New claims 127 and 128.

New claims 127 and 128 depend from independent claim 89 and, hence, are free of the applied prior art for reasons advocated *supra* with respect to independent claim 89. Accordingly, claims 127 and 128 are free of the applied prior art.

Therefore, the present application, as amended, overcomes the rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 519-9952 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. §1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

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Date

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